

AMENDED IN SENATE JUNE 24, 1999
AMENDED IN ASSEMBLY MAY 25, 1999
AMENDED IN ASSEMBLY APRIL 19, 1999
AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 784

**Introduced by Assembly Member Romero
(Coauthors: Assembly Members Aroner, Davis, Honda,
Jackson, Knox, Longville, and Mazzoni)**

February 24, 1999

An act to amend Sections 14170.8 and 14171.6 of, and to add ~~Sections 14100.75, 14107.7, 14107.9, 14107.10, 14107.11, and 14107.25~~ *Section 14100.75* to, the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 784, as amended, Romero. Medi-Cal.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons.

Existing law specifies that any Medi-Cal provider of durable medical equipment or incontinence supplies shall provide to the department a bond of not less than \$25,000, but authorizes the provider to seek an exemption from that requirement after continuous operation of 3 years.

This bill would extend those requirements to other providers under the Medi-Cal program, and would require the department to establish a mechanism to track participation rates to determine if the requirement is a deterrent to Medi-Cal program participation.

~~Existing law provides that the Director of Health Services, may adopt, amend, or repeal, in accordance, such reasonable rules and regulations as may be necessary or proper to carry out the purposes and intent of the Medi-Cal program and to enable it to exercise the powers and perform the duties conferred upon it by law.~~

~~Existing regulations require that providers shall meet certain standards for participation in the Medi-Cal program, including the requirement that the provider shall be eligible to, or be certified to, participate in the federal Medicare program.~~

~~This bill would revise the standards for provider participation in the Medi-Cal program.~~

~~This bill would also require the department to prohibit individuals or entities with a demonstrated history of questionable Medi-Cal billing practices from participating in the Medi-Cal program, and would specify factors the department shall consider in determining if an applicant's practices fall within the parameters of questionable billing practices.~~

~~Existing law establishes procedures for seeking approval by the department to participate as a provider in the Medi-Cal program.~~

~~This bill would require the department to require disclosure of certain information from applicants for Medi-Cal provider numbers.~~

~~The bill would require that all individuals, partnerships, clinics, groups, associations, corporations, or institutions participating in the Medi-Cal program assume financial responsibility for medicaid claims that do not comply with law and that result in overpayments.~~

~~Existing law provides that principal labelers and other primary suppliers of goods and services to incontinence supplies providers under the Medi-Cal program maintain accounting records to support the cost of goods and services~~

provided to those providers, subject to audit or examination by the department.

This bill would extend that requirement to primary Medi-Cal suppliers, as defined, of ~~goods and services~~ *equipment and supplies* to all providers under the Medi-Cal program.

Existing law requires the Director of Health Services to establish administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination for final settlements.

This bill would revise those procedures to require that collection of overpayments subject to a notice of deficiency by the department shall not be deferred although the provider has submitted a request for an appeal process, if the department determines that fraud or willful misrepresentation was applied in the provision of the goods or services, until the completion of the appeal process except in certain cases of extreme financial hardship.

Existing law requires that a provider of durable medical equipment or incontinence supplies under the Medi-Cal program shall be subject to certain penalties and interest on reimbursements received under the Medi-Cal program to which the provider is not entitled.

This bill would extend those penalty and interest requirements to also apply to any provider of services, as defined.

This bill would exempt certain primary care clinics from all the provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14100.75 is added to the Welfare
- 2 and Institutions Code, to read:
- 3 14100.75. (a) (1) Any provider of goods or services
- 4 shall provide, to the department, a bond, or other security
- 5 satisfactory to the department, of an amount determined
- 6 by the department, pursuant to regulations adopted by
- 7 the department.



(2) The department, in determining the amount of bond or security required by paragraph (1), shall base the determination on the level of estimated billings, and shall not be less than twenty-five thousand dollars (\$25,000).

(b) (1) After three years of continuous operation as a provider, a Medi-Cal provider may apply to the department for an exemption from the requirements of subdivision (a).

(2) The department shall adopt regulations establishing conditions for the approval or denial of applications for exemption pursuant to paragraph (1).

(c) The department shall establish a mechanism to track rates of participation among providers who are subject to the requirement of subdivision (a) to determine if the requirement is a deterrent to Medi-Cal program participation among provider applicants.

(d) Subdivisions (a) and (b) do not apply to individuals who are licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or to any clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.

~~SEC. 2. Section 14107.7 is added to the Welfare and Institutions Code, to read:~~

~~14107.7. (a) The department shall, in consultation with the Controller, the Attorney General, and interested organizations such as the California Medical Association, adopt regulations to preclude individuals with a demonstrated history of questionable Medi-Cal billing practices from obtaining a Medi-Cal provider number.~~

~~(b) The department shall, when adopting the regulations required by subdivision (a), consider the following:~~

~~(1) The background and qualifications of each applicant and the immediate family and business associates of the applicant, including, but not limited to, investors, partners, shareholders, and members of the board of directors, with respect to the type and nature of the medical services to be provided.~~

1 ~~(2) Sources of funding for the business of the~~
2 ~~applicant.~~

3 ~~(3) Prior involvement of a participant and the~~
4 ~~immediate family and business associates of the~~
5 ~~participant, including, but not limited to, investors,~~
6 ~~partners, shareholders, and members of the board of~~
7 ~~directors, in any Medi-Cal program or any other related~~
8 ~~program and the status of all prior or pending audits,~~
9 ~~audit appeals, and investigations.~~

10 ~~(e) The department shall clearly inform an applicant~~
11 ~~that false disclosure of the required information~~
12 ~~constitutes grounds for termination of the applicant's~~
13 ~~status as a provider in the Medi-Cal program and the~~
14 ~~provider number. The department shall adopt~~
15 ~~regulations for the termination of an individual's or other~~
16 ~~entity's provider number for falsifying information on the~~
17 ~~required disclosures.~~

18 ~~(d) This section shall not apply to any clinic licensed~~
19 ~~pursuant to subdivision (a) of Section 1204 of the Health~~
20 ~~and Safety Code.~~

21 ~~(e) The department shall implement this section~~
22 ~~through the adoption of emergency regulations in~~
23 ~~accordance with the Administrative Procedure Act~~
24 ~~(Chapter 3.5 (commencing with Section 11340) of Part 1~~
25 ~~of Division 3 of Title 2 of the Government Code). The~~
26 ~~initial adoption of emergency regulations pursuant to this~~
27 ~~section and one readoption of those initial regulations~~
28 ~~shall be deemed to be an emergency and necessary for~~
29 ~~the immediate preservation of the public peace, health~~
30 ~~and safety, or general welfare. Initial emergency~~
31 ~~regulations and the first readoption of those regulations~~
32 ~~shall be exempt from review by the Office of~~
33 ~~Administrative Law. The emergency regulations~~
34 ~~authorized by this section and the readoption of those~~
35 ~~regulations shall be submitted by the Office of~~
36 ~~Administrative Law for filing with the Secretary of State~~
37 ~~and publication in the California Code of Regulations and~~
38 ~~shall remain in effect for no more than 180 days.~~

39 ~~SEC. 3. Section 14107.9 is added to the Welfare and~~
40 ~~Institutions Code, to read:~~

~~14107.9. (a) Any medical professional who is subject to licensing requirements in the state who is listed as an owner or operator of any provider of Medi-Cal goods or services in the acquisition of a Medi-Cal provider number shall disclose to the department the amount of operational interest he or she will have in the operation of the provider.~~

~~(b) Any medical professional whose medical license is used in the application of any business for a Medi-Cal provider number and any other person who has any ownership interest in the provider shall provide to the department a signed, written statement assuming financial responsibility for all medicaid claims that do not comply with Medi-Cal statutes and regulations and that result in overpayments.~~

~~(c) This section shall not apply to any clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.~~

~~SEC. 4. Section 14107.10 is added to the Welfare and Institutions Code, to read:~~

~~14107.10. Any individual, partnership, clinic, group, association, corporation, or institution, except a clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code, participating as a provider of goods or services in the Medi-Cal program shall assume financial responsibility for all medicaid claims that do not comply with Medi-Cal statutes and regulations and that result in overpayments.~~

~~SEC. 5. Section 14107.11 is added to the Welfare and Institutions Code, to read:~~

~~14107.11. (a) The department shall not defer collection of any overpayment or withhold payment or any portion thereof applicable to any goods or services for which a determination of an overpayment is subject to an appeal if the department has reliable evidence of fraud or willful misrepresentation being applied in the provision of the goods or services until the completion of the appeal process.~~

~~(b) The department shall, if it determines that withholding a payment under subdivision (a) would~~

1 ~~result in the provider facing severe financial hardship,~~
2 ~~take all necessary steps to accelerate the process of the~~
3 ~~appeal.~~

4 ~~(e) This section shall not apply to any clinic licensed~~
5 ~~pursuant to subdivision (a) of Section 1204 of the Health~~
6 ~~and Safety Code.~~

7 ~~SEC. 6. Section 14107.25 is added to the Welfare and~~
8 ~~Institutions Code, to read:~~

9 ~~14107.25. The department may withhold payment or~~
10 ~~suspend or terminate the participation in the Medi-Cal~~
11 ~~program of any provider and the entity's Medi-Cal~~
12 ~~provider number when an audit, review, or investigation~~
13 ~~presents reliable evidence that a significant portion of the~~
14 ~~provider's Medi-Cal billings are generated through the~~
15 ~~prohibited referral services specified in Section 14107.2.~~
16 ~~This section shall not apply to any clinic licensed pursuant~~
17 ~~to subdivision (a) of Section 1204 of the Health and Safety~~
18 ~~Code.~~

19 ~~SEC. 7.—~~

20 ~~SEC. 2. Section 14170.8 of the Welfare and Institutions~~
21 ~~Code is amended to read:~~

22 ~~14170.8. (a) Notwithstanding any other provision of~~
23 ~~law, every primary supplier of pharmaceuticals or~~
24 ~~medical equipment; and supplies,—or—services; shall~~
25 ~~maintain accounting records to demonstrate the~~
26 ~~manufacture, assembly, purchase, or acquisition and~~
27 ~~subsequent sale, of any pharmaceuticals or medical~~
28 ~~equipment; and supplies,—or—services to Medi-Cal~~
29 ~~providers. Accounting records shall include, but not be~~
30 ~~limited to, inventory records, general ledgers, financial~~
31 ~~statements, purchase and sales journals and invoices,~~
32 ~~prescription records, bills of lading, and delivery records.~~
33 ~~For purposes of this section the term “primary suppliers”~~
34 ~~shall mean any manufacturer, principal labeler,~~
35 ~~wholesaler, and any other primary supplier.~~

36 ~~(b) Accounting records maintained pursuant to~~
37 ~~subdivision (a) shall be subject to audit or examination by~~
38 ~~the department or the Controller during regular business~~
39 ~~hours.~~

(c) This section shall not apply to any clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.

~~SEC. 8.—~~

SEC. 3. Section 14171.6 of the Welfare and Institutions Code is amended to read:

14171.6. (a) (1) Any provider, as defined in paragraph (2), that obtains reimbursement under this chapter to which it is not entitled shall be subject to interest charges or penalties as specified in this section.

(2) For purposes of this section, “provider” means any provider of services, as defined in subdivision (a) of Section 51051 of Title 22 of the California Code of Regulations.

(b) When it is established upon audit that the provider has claimed payments under this chapter to which it is not entitled, the provider shall pay, in addition to the amount improperly received, interest at the rate specified by subdivision ~~(i)~~ (j) of Section 14171.

(c) (1) When it is established upon audit that the provider claimed payments related to services or costs that the department had previously notified the provider in an audit report that the costs or services were not reimbursable, the provider shall pay, in addition to the amount improperly claimed, a penalty of 10 percent of the amount improperly claimed after receipt of the notice, plus the cost of the audit.

(2) In addition to the penalty and costs specified by paragraph (1), interest shall be assessed at the rate specified in subdivision ~~(i)~~ (j) of Section 14171.

(3) Providers that wish to preserve appeal rights or to challenge the department’s positions regarding appeal issues may claim the costs or services and not be reimbursed therefor if they are identified and presented separately on the cost report.

(d) (1) When it is established that the provider fraudulently claimed and received payments under this chapter, the provider shall pay, in addition to the amount improperly claimed, a penalty of 300 percent of the amount improperly claimed, plus the cost of the audit.

1 (2) In addition to the penalty and costs specified by
2 paragraph (1), interest shall be assessed at the rate
3 specified by subdivision ~~(i)~~ (j) of Section 14171.

4 (3) For purposes of this subdivision, a fraudulent claim
5 is a claim upon which the provider has been convicted of
6 fraud upon the Medi-Cal program.

7 (e) Nothing in this section shall prevent the imposition
8 of any other civil or criminal penalties to which the
9 provider may be liable.

10 (f) Any appeal to any action taken pursuant to
11 subdivision (b), (c), or (d) is subject to the administrative
12 appeals process provided by Section 14171.

13 (g) As used in this section, “cost of the audit” includes
14 actual hourly wages, travel, and incidental expenses at
15 rates allowable by rules adopted by the State Board of
16 Control and applicable overhead costs that are incurred
17 by employees of the state in administering this chapter
18 with respect to the performance of audits.

19 (h) This section shall not apply to any clinic licensed
20 pursuant to subdivision (a) of Section 1204 of the Health
21 and Safety Code.

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